IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL WRIT PETITION NO.474 OF 1995

1. Shri Vithal Sahakari Sakhar Karkhana Ltd.
   Venunagar, Gurusale, Tal.Pandharpur,
   through its Managing Director,

2. Audumber Kondiba Patil,
   Chairman,
   Shri Vithal Sahakari Sakhar Karkhana
   Ltd., Venunagar, Gurusale, Tal:Pandharpur,
   Dist. Solapur.

3. Shivdas Dharmaji Khade
   Managing Director,
   Shri Vithal Sahakari Sakhar Karkhana
   Ltd., Venunagar, Gurusale, Tal:Pandharpur,
   Dist. Solapur.

4. Madhukar Balbhim Gaikwad
   Agri. Officer,
   Shri Vithal Sahakari Sakhar Karkhana
   Ltd., Venunagar, Gurusale, Tal:Pandharpur,
   Dist. Solapur.

5. Krishnath Ramchandra Purawat
   Director,
   Shri Vithal Sahakari Sakhar Karkhana
   Ltd., Venunagar, Gurusale, Tal:Pandharpur,
   Dist. Solapur. R/o. Karkamb, Tal:Pandharpur.

6. Annasaheb Wamanrao Deshmukha
   Director,
   Shri Vithal Sahakari Sakhar Karkhana
   Ltd., Venunagar, Gurusale, Tal:Pandharpur,
   Dist. Solapur. R/o.Kasegaon, Tal:Pandharpur.

7. Laxman Namdeo Pawar
   Director,
   Shri Vithal Sahakari Sakhar Karkhana
   Ltd., Venunagar, Gurusale, Tal:Pandharpur,
   Dist. Solapur. R/o.Chilaiwadi, Tal:Pandharpur.

8. Rajaram Audumber Patil,
   Director,
   Shri Vithal Sahakari Sakhar Karkhana
   Ltd., Venunagar, Gurusale, Tal:Pandharpur,
   Dist. Solapur. R/o. Yewati , Tal: Mohol.

9. Vilas Shamrao Salunkhe,
Director,
Shri Vithal Sahakari Sakhar Karkhana
Ltd., Venunagar, Gurusale, Tal:Pandharpur,
Dist. Solapur. R/o. Padharicha Dhola,Gopalpur
Road, Pandharpur.

10. Vithal Pandurang Dhagade
Director,
Shri Vithal Sahakari Sakhar Karkhana
Ltd., Venunagar, Gurusale, Tal:Pandharpur,
Dist. Solapur. R/o. Karole, Tal:Pandharpur.

11. Namdeo Krishna Tad,
Director,
Shri Vithal Sahakari Sakhar Karkhana
Ltd., Venunagar, Gurusale, Tal:Pandharpur,
Dist. Solapur. R/o. Bhalawani, Tal:Pandharpur.

12. Dagadu Nivrutti Hake,
Director,
Shri Vithal Sahakari Sakhar Karkhana
Ltd., Venunagar, Gurusale, Tal:Pandharpur,
Dist. Solapur. R/o. Sonake, Tal:Pandharpur.

13. Bharat Tukaram Bhalke,
Director,
Shri Vithal Sahakari Sakhar Karkhana
Ltd., Venunagar, Gurusale, Tal:Pandharpur,
Dist. Solapur. R/o. Sarkoli, Tal:Pandharpur.

14. Raosaheb Vasudeo Chavan,
Director,
Shri Vithal Sahakari Sakhar Karkhana
Ltd., Venunagar, Gurusale, Tal:Pandharpur,
Dist. Solapur. R/o. Suste, Tal:Pandharpur.

15. Shankarrao Annasaheb Patil,
Director,
Shri Vithal Sahakari Sakhar Karkhana
Ltd., Venunagar, Gurusale, Tal:Pandharpur,
Dist. Solapur. R/o. Tawashi, Tal:Pandharpur.

16. Narayan Agatrao Patil,
Director,
Shri Vithal Sahakari Sakhar Karkhana
Ltd., Venunagar, Gurusale, Tal:Pandharpur,
Dist. Solapur. R/o. Kharsoli, Tal:Pandharpur.

17. Nanyaneshwar Yeshwant Gaikwad,
Director,

Shri Vithal Sahakari Sakhar Karkhana
Ltd., Venunagar, Gurusale, Tal:Pandharpur,
Dist. Solapur. R/o. Chale, Tal: Pandharpur.

18. Gorakha Hariba Jadhav,
Director,
Shri Vithal Sahakari Sakhar Karkhana
Ltd., Venunagar, Gurusale, Tal:Pandharpur,
Dist. Solapur. R/o. Palashi, Tal:Pandharpur.

19. Manik Baliram Shinde,
Director,
Shri Vithal Sahakari Sakhar Karkhana
Ltd., Venunagar, Gurusale, Tal:Pandharpur,
Dist. Solapur. R/o. Tawashi,
Tal: Pandharpur.

20. Namdeo Shankar Masal,
Director,
Shri Vithal Sahakari Sakhar Karkhana
Ltd., Venunagar, Gurusale, Tal:Pandharpur,
Dist. Solapur. R/o. Kasakarwadi,
Tal: Pandharpur,

21. Baban Annasaheb Nagane,
Director,
Shri Vithal Sahakari Sakhar Karkhana
Ltd., Venunagar, Gurusale, Tal:Pandharpur,
Dist. Solapur. R/o.Ozewadi,
Tal: Pandharpur.

22. Bhagwat Shamrao Gaikwad,
Director,
Shri Vithal Sahakari Sakhar Karkhana
Ltd., Venunagar, Gurusale, Tal:Pandharpur,
Dist. Solapur. R/o. Venunagar, Gurusale, Tal:
Pandharpur ..Petitioners.

Vs.

1. Murlidhar Bhimrao Thorat
R/o. 767, Govindpur, Pandharpur,
Dist. Solapur.

2. The State of Maharashtra ..Respondents.

Shri A.P.Mundargi, adv. i/b Mr.Sarang S. Aradhye adv. for the Petitioners.

Shri Prashant Patil, adv. i/b Mr. Umesh Mankapure, adv. for the respondent no.1.

Mrs.M.M.Deshmukh, APP for the State.

CORAM : J.H.BHATIA, J.
DATE : JUNE 16, 2007.

ORAL JUDGMENT:

1. Mr.Mundargi, the learned counsel for the petitioners, makes a statement that the petitioner nos.2,3 and 21 have expired pending this petition and seeks leave to delete their names. Leave granted. Amendment be effected immediately.

2. The respondent no.1, who is the original complainant, filed a complaint against the present petitioners in the Court of Special Judge at Solapur under the Essential Commodities Act. Petitioner no.1 is a co-operative sugar factory situated at Venu Nagar, Gurusale, Taluka: Pandharpur. Petitioner nos.2 and 3 were Chairman and Managing Director respectively of the said sugar factory during the relevant period and the petitioner nos.4 to 22 were directors of the said sugar factory during the relevant period. It is the case of the respondent no.1 that he was political opponent of the petitioner no.2, the Chairman of the factory. It is the contention of the respondent no.1 that he was a member of sugar factory as sugar-cane producer. During the years 1989-90, 1990-91 and 1991-92 crushing

seasons, there was sugar-cane crop in his field, Gat No.202 admeasuring 4 acres 6 R at village: Bhatumbre. The petitioner no.2 began to contend since 1989 that the respondent no.1 was not member of the sugar factory, just to cause financial loss to him and for that purpose, petitioners refused to accept his sugar-cane for the purpose of crushing during the relevant crushing seasons. In view of this attitude of the sugar factory and it's Board of Directors, respondent no.1 filed application before the Regional Deputy Director Sugar at Pune in the year 1989. On 30-9-1989 the said Deputy Director Sugar allowed that application and declared that the respondent no.1 was a member of the sugar factory. On 13-12-1989, the Regional Deputy Director Sugar also called remarks of the sugar factory as to why sugar-cane of the respondent no.1 was not accepted. The petitioners did not take cognizance of that notice and refused to accept the sugar-cane of the respondent no.1 and thereby, committed violation or breach of the conditions of the license issued to them. During the following year also, same story was repeated and on 5-9-1990 the respondent no.1 made application to the Regional Deputy Director Sugar and requested that his sugar-cane be accepted for crushing during the crushing season 1990-91. Meanwhile, the petitioner no.1 had

also challenged the order of the Deputy Director (Sugar) declaring the respondent no.1 to be a member. That petition was also dismissed by the High Court. The Sugar Commissioner, by letter dated 11th April, 1991, informed the petitioner no.2 in this respect. Still sugar-cane of the respondent no.1 was not accepted. During the crushing season of 1991-92 also they failed to accept his sugar-cane and thus, consistently for three years, the petitioner had committed breach of the condition of the license issued to them. With these allegations, the respondent no.1 filed complaint for the offence punishable under Section 427 read with Section 34 of the I.P.C. as well as under Section 3, 7 read with Section 10 of the Essential Commodities Act. The Special Judge, Solapur after recording Verification Statement of the complainant directed to issue process against all the accused persons under Sections 3, 7 and 10 of the Essential Commodities Act. The said order was challenged in the present writ petition by the accused persons.

3. The contention of the petitioners is that the respondent no.1/complainant was never a member of the petitioner no.1 sugar factory and in view of certain directions given in the license issued for the relevant

periods, sugar factory was not allowed to accept the sugar-cane of persons, who were not members or who were made members from common zone after the year 1981. It is also contended that the complaint is vague and does not make out a specific case against any of the petitioners.

4. Heard Mr.Mundargi the learned counsel for the petitioners and Mr.Prashant Patil the learned counsel for the respondent no.1. The learned counsel have taken me through the relevant record.

5. The copies of license of crushing of the sugar-cane for the periods from 1987-88 to 1992 are produced by the petitioners with affidavit of petitioner no.7 Laxman N. Pawar. The condition (xv) of the crushing license issued on 27th October, 1989 for the crushing season of 1989-90 prescribed that, the "Licensee/the sugar factory shall crush the sugar-cane of its members first and non member’s sugar-cane thereafter, during calendar month, according to harvesting programme drawn on the basis of plantation dates." Similar condition was imposed for the next year, i.e., 1990-91. However, on 16th November, 1991, license for crushing cane for crushing season 1991-92 was issued. Besides, the above referred condition,

following two conditions were also imposed.

> "(xvii) The cultivators who have been enrolled as members after 30-6-1981 from common zone, their sugar-cane cannot be crushed during this Season.
>
> (xviii) The villages not included in the zone of the Karkhana and the cultivators from these villages enrolled as members, their sugar-cane cannot be crushed as member's cane."

In view of this, sugar-cane of all cultivators, who were enrolled as members after 30-6-1981 from the common zone, could not be crushed during the season. Similarly, sugar-cane of cultivators of those villages, who were not included in the zone of karkhana could not be crushed.

6. Though Mr.Mundargi tried to contend that the petitioner was not a member and that he was enrolled as a member at the most after 1981 and therefore, his sugar-cane could not be crushed this contention can not be accepted in view of certain documentary evidence. Admittedly, on appeal preferred by the respondent no.1, Regional Joint Director (Sugar) at Pune had declared him to be a member. That order was challenged in writ petition by the sugar factory and admittedly that writ petition was also dismissed by the High Court on

20-9-1990. In view of this, it must be held that if not earlier, the respondent no.1 was member of the sugar factory atleast from 30-9-1989 when his appeal was allowed by the Regional Joint Director (Sugar) and he was declared member of the sugar factory. Whether that order had any retrospective effect or not can be considered only after perusal of that order but that order is not produced before the Court. It appears that on 27-12-1997 Board of Directors of the petitioner no.1 sugar factory passed resolution no.5 to accept the respondent no.1 as producer member of the sugar factory in view of above orders passed by the Regional Joint Director (Sugar) and Bombay High Court. It shows that Board of Directors took 7-8 years to implement the directions. In view of this and in view of condition (xv) in the license of crushing given for the year 1989-90 and 1990-91, the petitioner no.1 was bound to accept the sugar-cane of the respondent no.1.

7. It is contended that in view of the condition nos.(xvii) and (xviii) in the license of crushing for the season 1991-92, his sugar-cane could not be accepted because he was made member after 30-6-1981 from the common zone and because he was also member of some other sugar factory. This is a question of fact which can be considered after recording evidence and,

therefore, whether condition (xvi) and (xvii) prescribed in the license for the year 1991-92 would or would not be applicable in respect of the respondent no.1 may be considered only when the sufficient evidence is placed before the trial Court.

8. Prima-facie it appears that the sugar factory had violated conditions of license of crushing cane. Admittedly, these licenses are issued under the Maharashtra Sugar Factories (Reservation of Area and Regulation of crushing and sugar-cane supply) Order 1984 issued under the provisions of Essential Commodities Act. In view of breach of the conditions of the said order, it can be stated that prima-facie the offence under Section 3 punishable with Section 7 was committed. Admittedly, the petitioner no.1 is the Co-operative Sugar Factory and is a company within the meaning of Maharashtra Co-operative Societies Act.

9. Section 10 of the Essential Commodities Act reads as follows:

> "10. **Offences by companies**
>
> (1) If the person contravening an order made under section 3 is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the

> company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.
>
> PROVIDED that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.
>
> (2) Notwithstanding anything contained in sub-section (1), where an offence under this act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, or manager, secretary of other officer shall also be deed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

In view of provisions of Section 10(1), it is clear that besides the company itself, every person, who at the time the contravention was committed, was in charge of and was responsible to the company for the conduct of the business of the company, shall be held liable to be prosecuted and punished under this Act. Under sub-section (2) persons, with whose consent or connivance of, or neglect to act, such offence is committed are also liable to be prosecuted and punishable. In the complaint it is alleged by the respondent no.1 that the accused nos.2 and 3 were chairman and managing director and others were

directors of the sugar factory. It is alleged that the accused no.2 the chairman, was political opponent of the complainant/respondent and accused nos.3 to 23 were his yes-men and would act as per his direction. Though the complainant has generally alleged that the accused persons were requested to accept his sugar-cane and to comply the orders passed by the Regional Joint Director (Sugar) as well as High Court, no specific allegations are made against the respondent nos.4 to 22 nor it is mentioned how any of them was in charge of or responsible to the company for the conduct of the business of the company.

10. Mr.Mundargi has referred to bye-laws of the petitioner no.1 sugar factory to point out that the petitioner nos.4 to 22 could not be held responsible. Bye-law no.47 makes a general provision that subject to the powers vested in general body members and the Board of Directors and the special powers vested in managing director, the Executive Committee has to take certain decisions and to manage working of the factory. One of the responsibilities under bye-law 47(9) is to prepare programme for cutting of sugar-cane. Bye-law no.44 provides that subject to the powers of the Board of Directors, Executive Committee, the Special Committee and the Managing Director, the chairman of the society

shall look after day-to-day business of the society. Similarly bye-law no.49 provides that the Managing Director would be responsible for day-to-day carrying out of business of the society including observations on the rules, etc. to be followed by the co-operative society. In view of these bye-laws, Managing Director and the Chairman are personally responsible about the business. It may be stated that they are in real sense in charge and responsible to the company for the conduct of the business of the company. However, other directors of the society were not in charge and responsible to the society for the conduct of its business day-to-day. No specific allegations are made against the petitioner nos.4 to 22 in the complaint. Taking into consideration these facts and bye-laws of the petitioner no.1 Society, it must be held that process could not be issued against the accused nos.4 to 22 because no specific allegations were made against them. The learned Special Judge was right in issuing process only to the extent of accused nos.1,2 and 3 being sugar factory, Chairman and the Managing Director. In view of this, this petition deserves to be allowed partly to the extent of petitioner nos.4 to 22.

11. In the result, petition is partly allowed and

the impugned order about issuance of process to the extent of accused nos.4 to 22 is hereby set aside. The case shall proceed against the remaining accused as per the law. Rule made absolute accordingly.

[J.H.BHATIA, J.]